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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

10 JENS ERIK SORENSEN, as Trustee of) Case No. 08-cv-0304 BTM CAB
11 SORENSEN RESEARCH AND)
DEVELOPMENT TRUST)
NOTICE OF MOTION AND

12 Plaintiff,) DEFENDANT'S MOTION TO STAY
13 v.) THE LITIGATION PENDING THE
) REEXAMINATIONS OF U.S.
) PATENT NO. 4,935,184

13 | v.

14 METABO CORPORATION, a Delaware) Date: June 20, 2008
Corporation; METABOWERKE GMBH) Time: 11:00 a.m.
15 A German Corporation; and DOES 1-100) Courtroom: 15

15 A German Corporation, and DOES 1-100,) Courtroom: 15
Hon. Barry Ted Moskowitz

16 Defendants. From: Daily Texan MISCELLANEOUS

} NO ORAL ARGUMENT UNLESS REQUESTED

17) NO ORAL ARGUMENT UNLESS
18) REQUESTED BY THE COURT

19 NOTICE IS HEREBY GIVEN that on June 20, 2008 at 11:00 a.m. or as soon thereafter as
20 the matter may be heard by the above-entitled Court, located at 940 Front Street, San Diego, CA
21 92101-8900, defendant Metabo Corporation, ("Metabo"), will and hereby does respectfully move for
22 a stay of the above-captioned proceeding pending the ongoing United States Patent & Trademark
23 Office ("PTO") reexaminations of the patent in suit, U.S. Patent No. 4,935,184 ("the '184 patent").
24 Defendant's counsel conferred with plaintiff's counsel to seek plaintiff's assent to such a stay prior
25 to filing this motion but plaintiff does not assent to such a stay.

26 This Court already has stayed several related cases involving the '184 Patent based on the
27 fact that the '184 Patent currently is in reexamination before the PTO.

1 The same considerations that apply to those cases apply equally to the instant case. Thus, the
2 parties are at the very beginning of this litigation. Defendant's answer is being filed at
3 approximately the same time as defendant's motion to stay and no discovery has been taken. Under
4 such circumstances, it would be inefficient to establish a discovery schedule, conduct discovery or
5 hold a Markman hearing or trial since the reexamination may either eliminate claims entirely or
6 substantially change them.
7

8 Further, a stay will not prejudice plaintiff in any way. Plaintiff's patent has lapsed and as a
9 result, plaintiff will be seeking only damages in this matter. As a result, plaintiff can be adequately
10 compensated through monetary damages if plaintiff ultimately prevails in this matter. Defendant
11 will comply with its obligations to preserve evidence and as a result there is no prejudice.
12

13 Finally, a stay may simplify the issues in question in the trial of this case. If some or all of
14 the patent claims presently in the reexamination are found invalid by the PTO, this Court will not
15 need to address these claims in any way. To the extent that claims survive reexamination, those
16 claims may be modified or statements made by plaintiff during the reexamination process may be
17 pertinent to the claim construction.

18 This motion is based on this Notice of motion and Motion, the accompanying
19 memorandum of law, the Declaration of Jeffrey D. Lewin (all of which have been filed and served
20 concurrently with this Notice of Motion), on the papers and records on file in this action and related
21 actions, and on such other and further oral and documentary evidence as the Court may consider at
22 the time of any hearing.

23 For the reasons set forth in greater detail in the supporting memorandum, defendant
24 respectfully requests that the Court order this case stayed pending completion of the PTO's ongoing
25 reexaminations of the '184 patent.
26
27

1 Respectfully submitted:

2 Dated: April 7, 2008

METABO CORPORATION

3 By:

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5 Attorney for Metabo Corporation

6 SULLIVAN, HILL, LEWIN, REZ & ENGEL

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